IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6522 OF 2006

Lord Venkateshwara Charitabl &
Religious Trust ..Petitioner.

V/s.

Shri Dnyaneshwar Nathoba Bathe & Ors. ..Respondents.

Mr.Mohan Pungliya for petitioner.

Mr.Rahul Kate for respondent No.1.

Ms.Mhaispurkar, A.G.P. for respondent No.2.

CORAM : ABHAY S.OKA, J.

DATED : 11th APRIL, 2007.

P.C. :-

Rule. Shri Kate waives service for the first respondent. The learned AGP waives service for the second respondent. Taken up for hearing forthwith.

2. Challenge in this Writ Petition under Article 227 of the Constitution of India is to the Judgment and order dated 24th April, 2006 passed by the Sub-Divisional Officer, Bhor, Pune in a revision application preferred by the petitioner. The second respondent Tahsildar passed an order by invoking section 5 of the Mamlatdars' Court Act, 1906. The first respondent succeeded before the Tahsildar. By the order impugned in this Writ Petition, the learned Sub-Divisional Officer directed the Tahsildar to hold a fresh inquiry and to pass a fresh order after following

the procedures prescribed under the said Act of 1906.

3. After having heard the learned advocates appearing for the parties, I find that the order impugned needs to be modified. The operative part of the impugned order states that the Tahsildar will hold a fresh inquiry after following due procedures prescribed by law and will pass a fresh order. However, the observations made in the impugned Judgment are to the effect that the order passed by the Tahsildar was legal and proper. It is observed in the order that the procedural formalities are not complied with by the Tahsildar. The Revisional authority has not specifically set aside the order passed by the learned Tahsildar. The observation made by the Sub-Divisional Officer that the order of the Tahsildar was legal is contrary to the operative part of the impugned order by which a fresh inquiry is ordered. The order passed by the Sub-Divisional Officer of directing the Tahsildar to hold inquiry has not been challenged by the first respondent. Therefore, the impugned order will have to be modified and it will have to directed that the Tahsildar will decide the proceedings afresh after considering all the contentions raised by the parties, including the contention of the petitioner regarding the maintainability of the proceedings.

4. Hence Writ Petition is disposed of by passing the following order.

i. The Judgment and order dated 24th April, 2006 passed by the Sub-Division Officer, Bhor, Pune is modified.

ii. The Judgment and order dated 7th December, 2005 passed by the Tahsildar in proceedings under section 5 of the Mamlatdars' Court Act, 1906 is quashed and set aside and the proceeding is restored to the file of Tahsildar.

iii. The Tahsildar will hold a fresh inquiry in accordance with law.

iv. All contentions of the parties on merits of the said inquiry, including the contention raised by the petitioner as regards the jurisdiction of the Tahsildar to exercise powers in the matter are expressly kept open.

v. Tahsildar will complete the inquiry as expeditiously as possible and preferably within a period of 6 months from the date on which an authenticated copy of this order is produced before him.

vi. There will be no order as to costs.

(ABHAY S. OKA, J.)